

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE**

**Remanded by Supreme Court January 25, 2010**

**STATE OF TENNESSEE v. JASON J. MATTHEWS**

**Direct Appeal from the Circuit Court for Wayne County  
No. 13702 Robert Holloway, Judge**

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**No. M2010-00168-CCA-RM-CD - Filed February 17, 2010**

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The defendant, Jason J. Matthews, was convicted of second degree murder, a Class A felony, and sentenced to twenty-five years in the Tennessee Department of Correction as a Range I, standard offender. In our initial review, this court concluded the defendant's sentence ran afoul of *Blakely* and its progeny and modified the defendant's sentence to twenty-two years. The defendant appealed to the Tennessee Supreme Court, and the issue of sentencing has been remanded for reconsideration of sentencing in light of *State v. Moss*, 13 S.W.3d 374, 387 (Tenn. Crim. App. 1999). After review, we modify the defendant's sentence to seventeen years.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed as Modified**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

J. Daniel Freemon, Lawrenceburg, Tennessee, for the appellant, Jason J. Matthews.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and J. Douglas Dicus and Patrick Butler, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

The defendant was indicted in February 2005 for the 1993 second degree murder and especially aggravated robbery of Marty Dixon. The defendant filed a motion to quash a subpoena for his wife on the ground that spousal privilege barred her testimony. The trial court denied that motion by an order dated February 22, 2006.

On February 21, 2006, the State filed a motion to exclude consideration of lesser included offenses which were barred by the statute of limitations. The trial court granted that motion on March 1, 2006, but noted that, should the defendant choose to waive the statute of limitations at any time during the course of the trial, he would charge these lesser included offenses.

The defendant was found guilty by a jury of second degree murder and not guilty of especially aggravated robbery. He was subsequently sentenced to twenty-five years in the Department of Correction.

### **Facts**

The defendant and two friends were driving around the back roads of Wayne County on the night of the crime while consuming alcohol and cocaine. Late in the evening, they parked along one of the roads, and the victim, who was on his way home, spotted the truck. The two men accompanying the defendant testified that the victim stopped at approximately 3:00 or 3:30 a.m. on March 14, 1993. They testified that the victim approached the truck and inquired who was in the truck and why they were stopped there. One of the men accompanying the defendant testified that the victim was in no way threatening or provocative in his behavior. In fact, the victim knew one of the men with the defendant.

The man who knew the victim said that he got out of the truck to urinate and that the victim was teasing him and “cutting up.” The other witness testified that he stayed in the truck the entire time. The man who knew the victim testified that the defendant got out of the truck, grabbed the victim from behind, and began to pull him away from the vehicle. He said that he never saw a knife but did see the defendant make stabbing motions while the victim tried to retreat. The defendant pursued the victim and left the witness’ line of sight.

The defendant returned to the truck after approaching the open window of the victim’s car. The defendant got back into the truck, and one witness observed the defendant with a wallet. The defendant told the men that he had injured his hand and that the victim was not “alright.”

The victim’s body was discovered the next day by his uncle in a ditch alongside the road. He contacted the Sheriff’s office. The Investigator for the Sheriff’s office testified that the victim’s body was covered in stab wounds and that his intestines were outside his body. The authorities questioned another suspect but never found evidence to link anyone else to the crime.

The doctor who conducted the autopsy testified that the victim died as a result of

multiple stab wounds and incisions to the chest and abdomen. He said that he counted twenty knife wounds on the body, including incisions on the head, neck, chest, right hand, armpit, and left forearm. The doctor concluded that the wounds to the victim's hand and forearm were likely defensive wounds sustained when the victim attempted to use his hands to shield himself from the stabbing. He opined that the victim's death resulted from the cumulative effect of the wounds and the resulting blood loss.

The defendant told a number of people about the murder. He told them that he had been using cocaine and drinking when the victim approached their vehicle and that he killed the victim because he asked questions about the cocaine. One person told the defendant that he should turn himself in for the crime, but the defendant laughed at the suggestion.

The two men with the defendant during the murder said that they kept the secret because they were concerned for their families. The defendant later confessed to his wife that he had committed the crime. He told her that he "gutted" the victim because of the cocaine and that she would face the same fate as the victim if she told anyone. They divorced later, but she kept the secret out of fear for herself and their children.

An agent with the Tennessee Bureau of Investigation testified that he became involved in the investigation in 1995, but was unsuccessful in solving the case at that time. However, he said that in February of 2005, he received information that led him to focus on the defendant. His investigation led him to question both of the men accompanying the defendant on the night of the murder, and they both provided information that the defendant murdered the victim. After the defendant was indicted, his current wife provided a statement to the agent regarding information the defendant told her about the murder. She said that she confronted her husband after the indictment and that he confessed to her.

### **Analysis**

This matter is again before this court to consider the issue of the defendant's sentence. The defendant argued on appeal that the trial court erred in determining his sentence. We agreed in part because the trial court applied enhancement factors that relied on some factors not found by a jury in violation of *Blakely v. Washington*, 542 U.S. 296 (2004), and its progeny. The trial court also applied the enhancement factor concerning the defendant's previous history of criminal convictions, which did not offend the Sixth Amendment under *Blakely*. *State v. Gomez*, 239 S.W.3d 733, 740 (Tenn. 2007).

The defendant committed the underlying crime in 1993. Tennessee Code Annotated section 30-35-210(d) was amended in July 1995, to provide that the presumptive sentence for a Class A felony was the midpoint in the range. The application of the twenty-year

presumptive sentence as a starting point for an offense committed prior to July 1, 1995, would constitute an *ex post facto* violation of the defendant's constitutional rights. *State v. Moss*, 13 S.W.3d 374, 387 (Tenn. Crim. App. 1999) (citing *State v. James Holloway*, 1997 Tenn. Crim. App. LEXIS 607, \*\*3-4, No. 01C01-9608-CR-00330 (Tenn. Crim. App. at Nashville, June 30, 1997)). Our review of the defendant's sentence must be *de novo* without a presumption of correctness.

In calculating the sentence for a felony conviction committed prior to July 1, 1995, the presumptive sentence is the minimum within the range if there are no enhancement or mitigating factors. T.C.A. § 40-35-210(c) (1990). If there are enhancement factors but no mitigating factors, the trial court may set the sentence above the minimum. T.C.A. § 40-35-210(d). A sentence involving both enhancement and mitigating factors requires an assignment of relative weight for the enhancement factors as a means of increasing the sentence. T.C.A. § 40-35-210. The sentence may then be reduced within the range by any weight assigned to the mitigating factors present. *Id.*

During the sentencing hearing, the trial court noted the defendant's history of criminal convictions. The record contains the presentence report which reveals sixteen criminal convictions. In his brief, the defendant states that these convictions were for traffic offenses that were dismissed. Twelve of the convictions were driving related. The defendant was convicted of misdemeanor possession of marijuana in 1994, passing a worthless check in 1996, domestic assault in 1998, and passing a worthless check in 2000. Though these offenses were misdemeanors, they do justify some enhancement in sentencing under the statute. The 1994 conviction was for drugs, which played a role in the present conviction. The 1998 conviction for assault is also relevant to the present conviction. However, the prior convictions, alone, do not justify the imposed maximum sentence of twenty-five years.

The defendant qualifies as a Range I offender. The sentencing range is fifteen to twenty-five years. T.C.A. § 40-35-112(a). The trial court properly applied the enhancement factor for prior criminal convictions. A sentence of seventeen years, two years above the presumptive sentence, is more appropriate based on the presence of the applicable enhancement factor. Therefore, the defendant's sentence is set at seventeen years.

### Conclusion

Based on the foregoing and the record as a whole, we set the defendant's sentence at seventeen years. The judgment from the trial court is affirmed as to all other issues from the defendant's original direct appeal.

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JOHN EVERETT WILLIAMS, JUDGE